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Combating Police-State Tendencies

By David Wise

WASHINGTON — The coming to power of an elected President with a Congress controlled by his own political party offers an unparalleled opportunity to bring an end to lawbreaking by the intelligence and police agencies of the Federal Government.

For some four decades, a period spanning seven Administrations, the Central Intelligence Agency, the Federal Bureau of Investigation and other Government intelligence agencies have broken the law and violated the Constitution—secretly, out of view of the governed, often under cover of night.

The statistics are breathtaking: 28 million letters screened by the C.I.A. and hundreds of thousands opened; millions of cables read and copied by the National Security Agency in Operation Shamrock; 300,000 names in the "Hydra" computer used in Operation CHAOS, the C.I.A. domestic-spying program; 465,000 names in the intelligence files of the Internal Revenue Service; 10,665 F.B.I. "national security" wiretaps and bugs over a 25-year period, and hundreds of F.B.I. burglaries. The law-breaking, in short, has become institutionalized.

We should not assume that the abuses have ended because of publicity. On July 7, three days after the nation celebrated its Bicentennial, Timothy J. Redfearn, who received \$400 a month from the F.B.I. as an informant, broke into the offices of the Socialist Workers Party in Denver. He stole files and within hours showed them to his case officer, an F.B.I. agent in the Denver office.

Both President-elect Carter and Vice President-elect Mondale, who was a member of the Senate Select Committee on Intelligence, have voiced their concern over intelligence abuses. On the other hand, once Presidents move into the White House, they tend to view the C.I.A., the F.B.I., the eavesdropping N.S.A., and the other intelligence and police agencies as extensions of their power.

Yet if Mr. Carter and the 95th Congress want to do so, they can take specific steps to begin the process of controlling intelligence. The National Security Act of 1947 should be amended or replaced to prohibit the C.I.A. from engaging in covert operations abroad in peacetime. There is no specific authority in the law for such operations. Americans are unhappy if the Korean Central Intelligence Agency, which is closely modeled on its namesake in Langley, Va., pays off members of Congress in this country; that is precisely the sort of activity in which our own C.I.A. has engaged around the globe.

A democracy rests on the consent of the governed, and the governed are not permitted to give their consent to covert political operations because of their very nature. In time, covert operations will change the character of the institutions they seek to preserve.

The C.I.A.'s shadowy network of domestic divisions should be shut down and the Agency confined by law solely to the collection of intelligence overseas—which is what Congress intended when it created the C.I.A. As matters stand now, a future President could unleash the C.I.A. at home, as did Lyndon B. Johnson and Richard M. Nixon.

The F.B.I. Director, Clarence Kelley, has announced he isn't leaving unless asked. Mr. Carter should ask. Mr. Kelley surrounded himself with J. Edgar Hoover's cronies, which is hardly the way to reform the F.B.I. Moreover, Mr. Kelley has publicly defended the F.B.I.'s infamous COINTELPRO operations, its program of harassment against Americans. That alone qualifies him for early retirement.

The F.B.I.'s broad intelligence-gathering function, which allowed it to penetrate large segments of American society with no clear legal basis to do so, must be prohibited by statute. A new law should limit the F.B.I. to investigation of crimes, including conspiracy, in conspiracy cases, investiga-

tions should take place only on a showing of probable cause that a crime is being planned. Congress can and should draw careful standards so that potential terrorist acts do not become an umbrella for indiscriminate infiltration of society as a whole.

All Government wiretapping, bugging and searches should require a court warrant that meets the standards of the Fourth Amendment. There should be no exception for "national security," or foreign-intelligence cases. The House should establish an intelligence watchdog committee as a counterpart of the new Senate intelligence committee.

These are the minimum changes to be made. New laws may help, but it should also be remembered that existing laws have been repeatedly broken. Nor will laws protect us against a President who misuses his power. Ultimately, the outcome will depend more on whether as a people we believe in freedom, or fear it.

If we adopt the methods of our adversaries, we become indistinguishable from them. We lose by winning. We cannot uphold the law by breaking it, and we cannot preserve, protect and defend the Constitution—as Mr. Carter must pledge to do Jan. 20—by violating its provisions.

David Wise is author of "The American Police State: The Government Against the People."